

FOX ROTHSCHILD LLP
Midtown Building, Suite 400
1301 Atlantic Avenue
Atlantic City, NJ 08401
Michael J. Viscount, Jr. (Admitted *pro hac vice*)
Brian R. Isen (*Pro hac vice* pending)
Tel: (609) 348-4515

-and-

100 Park Avenue, 15th Floor
New York, NY 10017
Fred Stevens
Tel: (212) 878-7905

Attorneys for M&Q Plastic Products, LP

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re : Chapter 11
DPH HOLDINGS CORP., et al., : Case No. 05-44481 (RDD)
Debtors. : (Jointly Administered)

DELPHI CORPORATION, et al., :
Plaintiffs, : Adv. Pro. No. 07-02743
vs. :
M&Q PLASTIC PRODUCTS AND :
M AND Q PLASTIC PRODUCTS, :
Defendants. :
x

**DECLARATION OF JOSEPH MALLOZZI IN SUPPORT OF
MOTION OF M&Q PLASTIC PRODUCTS L.P. SEEKING AN ORDER (I)
DISMISSING THE COMPLAINT WITH PREJUDICE; (II) VACATING
CERTAIN PRIOR ORDERS PURSUANT TO FED. R. CIV. P. 60 AND FED R.
BANKR. P. 9024; AND (III) IN THE ALTERATIVE, REQUIRING
A MORE DEFINITE STATEMENT**

Joseph Mallozzi, on his oath, hereby deposes and says:

1. I am and have for a number of years served as an official of M&Q Plastic Products, a New Jersey corporation (“MQPP”). My current position with MQPP is that of Chief Financial Officer. During all times relevant to the Complaint in this matter and for many years before, the entity that did business with Delphi was M&Q Plastic Products, L.P., and Delaware limited partnership (herein and in the Motion called “M&Q”). Among my responsibilities as an official of MQPP, I am now and in the past have been involved in the financial management of M&Q until its dissolution (discussed below), and I am familiar with the facts set forth herein. I submit this declaration in support of M&Q’s motion for an order (i) dismissing the complaint with prejudice, (ii) vacating certain prior orders pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, and (iii) in the alternative, requiring a more definite statement (Adv. D.I. 26 and BK D.I. 20098) (the “Motion to Dismiss” or the “Motion”).¹ In some instances, the statements made by me in this declaration are based upon information I have discovered business records of M&Q currently under my control.

2. Prior to the bankruptcy filings of Delphi in 2005, the M&Q had for a number of years supplied various of the Debtors with convoluted and other tubing used primarily by Delphi in the production of wire harnesses and fuel tube assemblies.

3. After the Petition Date, M&Q continued to supply to Delphi under substantially the same terms as were in effect pre-petition.

4. The supply relationship continued during the bankruptcy until M&Q sold its assets and businesses and ceased doing business on March 14, 2008.

5. Over the years, annual sales by M&Q to Delphi involved thousands of shipments and multiple millions of dollars of goods delivered.

¹ References to the “Adv. D.I.” are to the docket of the adversary proceeding captioned above and references to the “BK D.I.” are to the docket of the bankruptcy case captioned above. Also, capitalized terms used herein without definition shall have the meanings assigned to them in the Motion unless the context clearly indicates to the contrary.

6. On or about June 6, 2006, M&Q filed a proof of claim for unsecured sums due in the amount of \$653,828.81 as of the Petition Date, which was assigned Claim No. 7547 by the Debtors (the “Claim”).² M&Q sold the Claim to Goldman Sachs Credit Partners, L.P. in July 2006. A Notice of the Transfer of Claim was filed in the Bankruptcy Case on or about August 8, 2006.

7. In the Bankruptcy Case, M&Q made a reclamation demand directed to Delphi in accordance with procedures approved by the Court, and on October 15, 2005, counsel for M&Q filed a Notice of Reclamation Demand in the Bankruptcy Case (BK D.I. 298). By conscious inaction, M&Q elected to have its reclamation claim treated as a general unsecured claim, in response to the Debtors’ December 10, 2007 Notice of Treatment of Reclamation Claim Under Plan of Reorganization.

8. By December, 2007, M&Q had no further interest in the Delphi Bankruptcy Case other than that of a post-petition supplier and, as long as it was getting paid for the shipments of product to the Debtors, knew of no reason to be following the proceedings that continued.

9. Subsequently, M&Q sold its business and operating assets to a third party through a transaction that closed on March 14, 2008. M&Q ceased doing business with the Debtors at that time.

10. M&Q was a limited partnership consisting of a single limited partner and a single general partner. In order to facilitate the dissolution of the limited partnership and each of its partners, M&Q set up and funded a liquidating trust on December 22, 2009. By its terms, the liquidating trust was made effective as of September 30, 2009. The liquidating trust contains the sole remaining assets of M&Q.

11. On January 28, 2010, the partnership and the limited partner were both dissolved, and the general partner was dissolved on March 26, 2010.

12. The records of M&Q do not reflect receipt of notice by mail of any of what was happening in the Delphi Bankruptcy Case in connection with the Debtors’ Avoidance Actions.

² The claim number set forth in paragraph 17 of the Motion is incorrect.

13. To the best of my knowledge, M&Q was never notified about the fact that the various Preservation of Claims and Extension Motions and the Plan Modifications would result in M&Q being sued for return of payments made as a result of alleged preferences. In fact, M&Q actually made numerous attempts after the filing of bankruptcy by Delphi to obtain clarification and information about payments it received in the lead up to bankruptcy, only to be continually stymied by lack of response or refusal by Delphi personnel to provide any information at all on the subject.

14. M&Q was not advised of the commencement of this \$6.6 million lawsuit until the Debtors filed their Forty-Fourth Omnibus Claims Objection to which there was attached an exhibit listing M&Q as defendant in a preference action. This objection apparently prompted lawyers to contact potential preference defendants and when I was contacted I referred the matter to the lawyers at Fox Rothschild who had been involved in the Delphi matter for M&Q until the end of 2007 when there was no known reason for M&Q to have any further interest in the Bankruptcy Case.

15. The delay in discovery of this lawsuit has placed M&Q in a difficult if not impossible position, because the business that was M&Q no longer exists. M&Q is now nothing more than a shell existing only to the extent of limited assets in a liquidating trust set up after the assets and business that supplied the Debtors was sold in March of 2008. At the time of its sale, M&Q made was not aware of the Complaint that had been filed under seal, and made no provision to defend this lawsuit. Now, over two (2) years later, my predecessor as CFO and other key employees who handled the Delphi account are no longer with the company, and many relevant records are in the possession and control of a third party who has no interest in the outcome of this case and little or no incentive to assist M&Q in its defense.

The foregoing is true and correct to the best of my knowledge information and belief. I am aware that if any of the foregoing is willfully false, I am subject to punishment for perjury.

Dated: North Wales, PA
July 1, 2010

s/ Joseph Mallozzi
Joseph Mallozzi